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September 24, 2004

BY MESSENGER

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 SEP 24 P 4: 22

Lawrence Norton, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Complaint against Texans for Truth

Dear Mr. Norton:

Enclosed for filing is an original and three copies of a complaint against Texans for Truth, filed by Democracy 21, the Campaign Legal Center and the Center for Responsive Politics.

Respectfully submitted,


Donald J. Simon

Enclosures

BEFORE THE
FEDERAL ELECTION COMMISSION

Democracy 21
1825 I Street, NW, Suite 400
Washington, DC 20006
202-429-2008

Campaign Legal Center
1640 Rhode Island Ave. NW, Suite 650
Washington, DC 20036
202-736-2200

Center for Responsive Politics
1101 14th Street, NW, Suite 1030
Washington, DC 20005
202-857-0044

v.

MUR No.

5542

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 SEP 24 P 4: 21

Texans for Truth
5909 Sierra Grande
Austin, Texas 78759

COMPLAINT

1. In March, 2002, Congress enacted the Bipartisan Campaign Reform Act of 2002 (BCRA) in order to stop the raising and spending of soft money to influence federal elections. The relevant provisions of BCRA were upheld by the Supreme Court in *McConnell v FEC*, 540 U.S. 39, 124 S.Ct. 619 (2003).

2. Since the enactment of the BCRA, a number of political and party operatives have been engaged in illegal new schemes to use soft money to influence the 2004 presidential and congressional elections. These schemes, for the most part, involve the use of so-called "section 527 groups" – entities registered as "political organizations" under section 527 of the

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Internal Revenue Code, 26 U.S.C. § 527 – as vehicles to raise and spend soft money to influence the 2004 federal elections.

3. These schemes to inject soft money into the 2004 federal elections are illegal. The Supreme Court in *McConnell* took specific note of “the hard lesson of circumvention” that is taught “by the entire history of campaign finance regulation.” 124 S.Ct. at 673. The deployment of “section 527 groups” as the new vehicle for using soft money to conduct partisan activities to influence federal elections is simply the latest chapter in the long history of efforts to evade and violate the federal campaign finance laws.

4. Texans for Truth is registered with the IRS as a section 527 group but is not registered with the Commission as a political committee. However, Texans for Truth is, in fact, a federal political committee. Texans for Truth is an entity which, as a 527 group, has a “major purpose,” indeed an overriding purpose, to influence candidate elections, and more specifically, federal candidate elections, and which has spent, or is planning to spend, significant amounts of funds to influence the 2004 presidential election. This “political committee” is therefore required to register with the Commission under the federal campaign finance laws, and is subject to the federal contribution limits and source prohibitions on the funds it receives. As a political committee, Texans for Truth may not receive more than \$5,000 per year from an individual donor, and may not receive any union or corporate treasury funds whatsoever. 2 U.S.C. § § 441a(a)(1)(C), 441b(a). These limits and prohibitions apply to all “political committees,” including those that engage in independent spending. 11 C.F.R. § 110.1(n).

5. The Supreme Court in *McConnell* took specific – and repeated – note of the central role of the Federal Election Commission in improperly creating the soft money

loophole that was used to circumvent the federal campaign finance laws. The massive flow of soft money through the political parties into federal elections was made possible by the Commission's allocation rules, which the Court described as "FEC regulations [that] permitted more than Congress, in enacting FECA, had ever intended." 124 S.Ct. at 660, n.44. Indeed, the Court noted that the existing Federal Election Campaign Act (FECA), which had been upheld in *Buckley*, "was subverted by the creation of the FEC's allocation regime" which allowed the parties "to use vast amounts of soft money in their efforts to elect federal candidates." *Id.* at 660 (emphasis added). The Court flatly stated that the Commission's rules "invited widespread circumvention" of the law. *Id.* at 661.

6. It is critically important that the Commission not repeat this history here. The Commission must ensure that it does not once again invite "widespread circumvention" of the law by licensing the injection of massive amounts of soft money into federal campaigns, this time through section 527 groups whose major, indeed overriding, purpose is to influence federal elections.

7. The Commission has the authority to take enforcement action based on a complaint where it finds reason to believe that a person "has committed, or is about to commit," a violation of the law. 2 U.S.C. §§ 437g(a)(2), 437g(a)(4)(A)(i), 437g(a)(6)(A); *see also* 11 C.F.R. 111.4(a) ("Any person who believes that a violation...has occurred or is about to occur may file a complaint...") (emphasis added). Based on published reports, the Texans for Truth has either committed or is "about to commit" violations of the law by raising and spending significant amounts of soft money – including large individual contributions – to influence the 2004 presidential elections. The respondent is doing so without registering as a federal political committee and without complying with the rules applicable to such political

committees. It is critical that the Commission act effectively and expeditiously to prevent the violations of the law threatened by the widely publicized activities of this section 527 group.

Texans for Truth

8. Texans for Truth was established on August 31, 2004 as a “political organization” under section 527 of the Internal Revenue Code, 26 U.S.C. § 527.¹ Texans for Truth has not registered as a “political committee” with the FEC.

9. Texans for Truth has made clear that its major, indeed overriding, purpose is to influence the 2004 presidential election and defeat the President Bush in his campaign for re-election. A press release announcing the group’s formation states that it is launching “a campaign...seeking to uncover the answers to persistent questions surrounding George W. Bush’s absence from his National Guard Service in Alabama.”² The press release quotes Glen Smith, organizer of Texans for Truth, stating “We have a commander in chief who dodged his own military duty during Vietnam. We think the husbands, wives, mothers and fathers of these soldiers [killed in Iraq] deserve to know the truth about George W. Bush....Was George W. Bush AWOL in Alabama? America deserves to know....”

10. According to press reports, Texans for Truth was “formed in response to a conservative 527 that had been attacking Democratic presidential nominee Sen. John Kerry’s Vietnam War service record and antiwar activity...”³ Another report notes that the group was created “in reply to Swift Boat Veterans for Truth, the group of Vietnam veterans backed by

¹ A copy of its Form 8871, Notice of Section 527 Status, filed with the IRS, is attached as Exhibit A

² This press release is attached as Exhibit B

³ L. Getter, “Writer Is Top ‘Texans’ Donor, *The Los Angeles Time* (Sept. 15, 2004)(Exhibit C)

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prominent Texas Republican donors who launched a TV commercial in early August alleging that Kerry lied about his decorated Vietnam service.”⁴

11. Texans for Truth has begun a TV ad campaign “featuring a former Air National Guard lieutenant who said he never saw Bush while the president says he served on a Montgomery air base.”⁵

12. The goal of Texans for Truth to influence the presidential campaign is demonstrated by the fact that it is focusing its ad campaign on presidential battleground states. According to a published report about the formation of the group and its ad campaign, “Smith said the ad will run in Oregon, Ohio, Arizona and Michigan – battleground states that have been hit hard by military casualties in Iraq.”⁶ The website of Texans for Truth solicits donations to “help us put the Texans for Truth TV ad on the air in key swing states across the nation.”⁷ The press release announcing the group’s formation states that its ads will run “in swing state communities who’ve sustained the most losses in Iraq.”

13. According to press reports, Texans for Truth has raised approximately \$400,000 between August 31 and September 15, 2004, including a donation of \$100,000 from Daniel O’Keefe, a television producer.⁸

⁴ H. Witt and J. McCormick, “Agile ‘527’ groups lead well-funded hit-run war,” *Chicago Tribune* (Sept. 10, 2004) (Exhibit D).

⁵ L. Getter, *supra* Exhibit C.

⁶ J. Vertuno, “Texans fighting some of biggest battles of campaign,” *The Associated Press* (Sept 9, 2004) (Exhibit E)

⁷ This website page is attached as Exhibit F.

⁸ L. Getter, *supra* Exhibit C

Violation of Law

(Political Committee Status)⁹

14. Texans for Truth is a “political committee” under the federal campaign finance law. It is an entity which (1) has a “major purpose” to influence candidate elections, and in particular, federal candidate elections, and (2) has received contributions or made expenditures of more than \$1,000 in a calendar year. Because Texans for Truth meets both parts of this test, it is a federal “political committee,” and is accordingly subject to the contribution limits, source prohibitions and reporting requirements that apply to all federal political committees. Because it has not complied with these rules applicable to federal political committees, it has been, and continues to be, in violation of the law.

15. Section 431(4) of Title 2 defines the term “political committee” to mean “any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 2 U.S.C. § 431(4); *see also* 11 C.F.R. § 100.5(a). A “contribution,” in turn, is defined as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office....” 2 U.S.C. § 431(8)(A). Similarly, an “expenditure” is defined as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office...” 2 U.S.C. § 431(9)(A).

⁹ This count sets forth a violation that is substantively identical as a matter of law to allegations made in three complaints previously filed by the same complainants against the Media Fund (complaint filed January 15, 2004), against Progress for America-Voter Fund (complaint filed July 21, 2004), and against Swift Boat Veterans for Truth (complaint filed August 10, 2004), three similarly situated section 527 groups.

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16. Any entity which meets the definition of a “political committee” must file a “statement of organization” with the Federal Election Commission, 2 U.S.C. § 433, and periodic disclosure reports of its receipts and disbursements. 2 U.S.C. § 434. In addition, a “political committee” is subject to contribution limits, 2 U.S.C. § 441a(a)(1), §441a(a)(2), and source prohibitions, 2 U.S.C. § 441b(a), on the contributions it may receive and make. 2 U.S.C. § 441a(f). These rules apply even if the political committee is engaged only in independent spending. 11 C.F.R. § 110.1(n).

17. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court construed the term “political committee” to “only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” 424 U.S. at 79 (emphasis added). Again, in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986), the Court invoked the “major purpose” test and noted that if a group’s independent spending activities “become so extensive that the organization’s major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.” 479 U.S. at 262 (emphasis added). In that instance, the Court continued, it would become subject to the “obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns.” *Id.* (emphasis added). The Court in *McConnell* restated the “major purpose” test for political committee status as iterated in *Buckley*. 124 S.Ct. at 675, n.64.

18. In *FEC v. GOPAC*, 917 F.Supp. 851 (D.D.C. 1996), a single federal district court further narrowed the “major purpose” test to encompass not just the nomination or election of any candidate, but only “the nomination or election of a particular candidate or candidates for federal office.” 917 F.Supp. at 859. Thus, the court said that “an organization is

a ‘political committee’ under the Act if it received and/or expended \$1,000 or more and had as its major purpose the election of a particular candidate or candidates for federal office.” *Id.* at 862. The court further said that an organization’s purpose “may be evidenced by its public statements of its purpose or by other means, such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates.” *Id.*

19. It is the view of complainants that the district court in *GOPAC* misinterpreted the law and incorrectly narrowed the test for a “political committee” as set forth by the Supreme Court in *Buckley*, and that the Commission should have appealed the district court decision in *GOPAC*. Nonetheless, even under the approach adopted in *GOPAC*, the respondent here is a “political committee” and is required to file as such under federal law.

20. There is a two prong test for “political committee” status under the federal campaign finance laws: (1) whether an entity or other group of persons has a “major purpose” of influencing the “nomination or election of a candidate,” as stated by *Buckley*, or of influencing the “election of a particular candidate or candidates for federal office,” as stated by *GOPAC*, and if so, (2) whether the entity or other group of persons receives “contributions” or makes “expenditures” of at least \$1,000 or more in a calendar year.

21. Prong 1: The “major purpose” test. Texans for Truth has a “major purpose” of influencing the election of a candidate, under *Buckley*, or of a “particular candidate or candidates for federal office,” under *GOPAC*. Texans for Truth thus meets the first prong of the test for “political committee” status, under either *Buckley* or *GOPAC*

22. First, Texans for Truth is organized under section 527 of the Internal Revenue Code, 26 U.S.C. § 527, and is thus by definition a “political organization” that is operated “primarily” for the purpose of influencing candidate elections. Section 527 of the IRC

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provides tax exempt treatment for “exempt function” income received by any “political organization.” The statute defines “political organization” to mean a “party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.” 26 U.S.C. § 527(e)(1) (emphasis added). An “exempt function” is defined to mean the “function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors...” 26 U.S.C. § 527(e)(2) (emphasis added). The Supreme Court said in *McConnell*, “Section 527 ‘political organizations’ are, unlike § 501(c) groups, organized for the express purpose of engaging in partisan political activity.” 124 S.Ct. at 678, n.67. The Court noted that 527 groups “by definition engage in partisan political activity.” *Id* at 679. A “political organization” as defined in section 527 must register as such with the Secretary of the Treasury, and must file periodic disclosure reports with the Secretary as required by section 527(j). Texans for Truth has registered as a “political organization” under section 527.

23. Thus, by definition, any entity that registers with the Secretary as a “political organization” under section 527 is “organized and operated primarily” for the purpose of “influencing or attempting to influence the selection, nomination, election or appointment of” an individual to public office. The Commission has frequently cited the section 527 standard as identical to the “major purpose” prong of the test for “political committee” status. *See e.g.*, Advisory Opinions 1996-13, 1996-3, 1995-11. Accordingly, any group that chooses to register as a “section 527 group” – including Texans for Truth -- is by definition an entity “the major

purpose of which is the nomination or election of a candidate...”¹⁰ Under the “major purpose” standard set forth in *Buckley*, this is sufficient to meet the first prong of the “political committee” test.

24. But even if that standard is further narrowed by *GOPAC*, the respondent here, Texans for Truth, has a “major purpose” of influencing the nomination or election of a “particular candidate or candidates for federal office...” 917 F.Supp. at 859. Texans for Truth has made clear that it intends to spend significant amounts on broadcast ads that will expressly refer to, and attack or oppose, President Bush. Thus, Texans for Truth has a “major purpose” to support or oppose particular federal candidates, thus meeting even the most rigorous definition under *GOPAC* of the first prong of the test for “political committee.”

25. Prong 2: “Expenditures” of \$1,000. The second prong of the definition of “political committee” is met if an entity which meets the “major purpose” test also receives “contributions” or makes “expenditures” aggregating in excess of \$1,000 in a calendar year. Both “contributions” and “expenditures” are defined to mean funds received or disbursements made “for the purpose of influencing” any federal election. 2 U.S.C. § 431(8), (9).

26. This second prong test of whether a group has made \$1,000 in “expenditures” is not limited by the “express advocacy” standard when applied to a section 527 group, such as Texans for Truth. Rather, the test for “expenditure” in this case is the statutory standard of whether disbursements have been made “for the purpose of influencing” any federal election, regardless of whether the disbursements were for any “express advocacy” communication. The Supreme Court made clear in *Buckley* that the “express advocacy” standard does not apply to an entity, like a section 527 group, which has a major purpose to influence candidate

¹⁰ This would be true in all instances other than a 527 organization which is devoted to influencing the nomination or appointment of individuals to appointive office such as, *e g*, a judicial appointment, but this exception does not apply to Texans for Truth

elections and is thus not subject to concerns of vagueness in drawing a line between issue discussion and electioneering activities. Groups such as section 527 “political organizations” are formed for the principal purpose of influencing candidate elections and, as explained by the Court in *Buckley*, their expenditures “can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related.” 424 U.S. at 79 The Court affirmed this position in *McConnell*. 124 S.Ct. at 675, n.64. Thus, the “express advocacy” test, which the Supreme Court deemed to be “functionally meaningless,” 124 S.Ct. at 703, is not relevant to the question of whether a section 527 organization is spending money to influence the election of federal candidates.

27. Texans for Truth has made “expenditures” in amounts far in excess of the \$1,000 threshold of the second prong of the test for “political committee” status. These expenditures have been made for broadcast advertisements that attack or oppose President Bush. These disbursements have been “for the purpose of influencing” federal elections, and thus constitute “expenditures” under the law.

28. Ads run by a section 527 “political organization” that promote, support, attack or oppose federal candidates are clearly for the purpose of influencing a federal election, even if such ads do not contain “express advocacy” or are not “electioneering communications,” as defined in 2 U.S.C. § 434(f)(3)(A)(i). Because the “express advocacy” test does not apply to section 527 groups, and thus does not limit the statutory definition of “expenditures” made by such groups, the funds spent by Texans for Truth to attack or oppose President Bush, are “expenditures.” They are being made “for the purpose of influencing” the 2004 presidential elections.

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29. Alternatively, even if the Commission incorrectly decides that the “express advocacy” test does apply to section 527 groups, the ads run by Texans for Truth meet that test as well. The Commission’s existing regulations define “express advocacy” to include a communication that “when taken as a whole and with limited reference to external events...could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more candidates because the electoral portion of the communication is unmistakable, unambiguous and suggestive of only one meaning and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates or encourages some other kind of action.” 11 C.F.R. § 100.21(b). The ads run by Texans for Truth, when taken as a whole, can only be interpreted by a reasonable person as opposing the re-election of President Bush, and thus meet the Commission’s existing regulatory definition of “express advocacy.” Thus, the ads by Texans for Truth contain “express advocacy” and therefore constitute “expenditures.”

30. Texans for Truth to date has not registered with the Commission as a federal political committee. It is presumably intending to make all of its disbursements regarding federal candidates from an account which does not comply with federal contribution limits, source prohibitions and reporting requirements.

31. In sum, Texans for Truth has a “major purpose” to support or oppose the election of one or more particular federal candidates, and it has spent far in excess of the statutory \$1,000 threshold amount on “expenditures” for this purpose. The Commission accordingly should find that Texans for Truth is a “political committee” under the Act. Texans for Truth has not filed a statement of organization as a political committee, as required by 2 U.S.C. § 432, and has not complied or does not intend to comply with reporting requirements

of 2 U.S.C. § 434, and has not complied with, and does not intend to comply with, the contribution limits and source prohibitions of 2 U.S.C. §§ 441a and 441b. The Commission should accordingly find Texans for Truth in violation of all of these provisions of law.

Disclosure

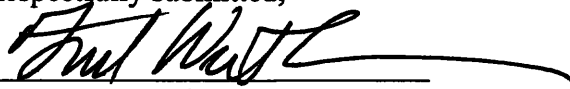
32. Because of the violations of law set forth above, the Commission and the public, including the complainants, are not receiving full and accurate public disclosure of the funds raised and spent by Texans for Truth, as required by FECA. Because it is a political committee, the funds received by Texans for Truth are “contributions” subject to the mandatory federal reporting requirements of FECA and are required to be fully disclosed to the Commission and to the public, 2 U.S.C. § 434, including complainants. The donations received by Texans for Truth as a section 527 group which is not reporting to the Commission as a federal political committee are subject only to reporting to the Internal Revenue Service under 26 U.S.C. § 527 and such disclosure may be avoided altogether if the recipient chooses to pay income tax on the donation. Further, section 527, unlike the FECA requirements applicable to political committees, does not require the reporting of the aggregate amount of unitemized contributions received by the group, so there is no basis to determine the total aggregate amount raised by such a section 527 group. Thus, to the extent that Texans for Truth is wrongly treating contributions required to be reported under FECA instead as donations to a section 527 account, the public, including complainants, and the Commission have no assurance that all contributions required to be disclosed under FECA are properly being disclosed, or that the total amount of contributions to Texans for Truth is being disclosed.

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Prayer for Relief

33. Wherefore, the Commission should conduct an immediate investigation under 2 U.S.C. §437g, should determine that Texans for Truth has violated or is about to violate 2 U.S.C. §§ 432, 434, 441a and 441b(a), and 11 C.F.R. § 114.4, should impose appropriate sanctions for such violations, should enjoin the Texans for Truth from all such violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with FECA and BCRA.

Respectfully submitted,



Democracy 21, by
Fred Wertheimer
1825 I Street, NW, Suite 400
Washington, DC 20006
202-429-2008



Campaign Legal Center, by
Trevor Potter
J. Gerald Hebert
1640 Rhode Island Ave. NW, Suite 650
Washington, DC 20036
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Center for Responsive Politics, by
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1101 14th Street, NW, Suite 1030
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1425 K Street NW – Suite 600
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Counsel for Democracy 21

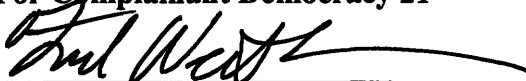
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Verification

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

For Complainant Democracy 21

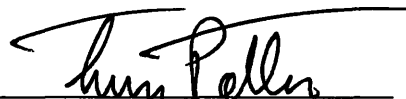

Fred Wertheimer

Sworn to and subscribed before me this 24 day of September, 2004


Notary Public

Melinda Spears Butler
Notary Public, District of Columbia
My Commission Expires 10-14-2008

For Complainant Campaign Legal Center



Trevor Potter

Sworn to and subscribed before me this 23rd day of September, 2004


Notary Public

JEANNE G. KATZ
Notary Public of District of Columbia
My Commission Expires December 14, 2007

For Complainant Center for Responsive Politics


Lawrence Noble

Sworn to and subscribed before me this 24 day of September, 2004


Notary Public

Candelaria O McGee
Notary Public, District of Columbia
My Commission Expires 04-14-2008

28044184602

Political Organization
Notice of Section 527 Status**Part I** General Information**1** Name of organization

Texans for Truth

Employer identification number

20 - 1559055

2 Mailing address (P.O. box or number, street, and room or suite number)

5909 Sierra Grande

City or town, state, and ZIP code

Austin, TX 78759

3 Check applicable box☒ Initial notice☐ Amended notice☐ Final notice**4a** Date established

08/31/2004

4b Date of material change**5** E-mail address of organization

no@email

6a Name of custodian of records

Glenn W Smith

6b Custodian's address

5909 Sierra Grande

Austin, TX 78759

7a Name of contact person

Glenn W Smith

7b Contact person's address

5909 Sierra Grande

Austin, TX 78759

8 Business address of organization (if different from mailing address shown above). Number, street, and room or suite number

5909 Sierra Grande

City or town, state, and ZIP code

Austin, TX 78759

9a Election authority

NONE

9b Election authority identification number**Part II** Notification of Claim of Exemption From Filing Certain Forms (see instructions)**10a** Is this organization claiming exemption from filing Form 8872, Political Organization Report of Contributions and Expenditures, as a qualified state or local political organization? Yes ☐ No ☒**10b** If 'Yes,' list the state where the organization files reports:**11** Is this organization claiming exemption from filing Form 990 (or 990-EZ), Return of Organization Exempt from Income Tax, as a caucus or association of state or local officials? Yes ☐ No ☒**Part III** Purpose**12** Describe the purpose of the organization

To educate voters on the records and views of candidates for public office and to promote interest in political issues and participation in elections

Exhibit A

28044184603

Part IV List of All Related Entities (see instructions)13 Check if the organization has no related entities ☒

14a Name of related entity	14b Relationship	14c Address
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Part V List of All Officers, Directors, and Highly Compensated Employees (see instructions)

15a Name	15b Title	15c Address
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Glenn W Smith	Treasurer	5909 Sierra Grande Austin, TX 78759
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Under penalties of perjury, I declare that the organization named in Part I is to be treated as a tax-exempt organization described in section 527 of the Internal Revenue Code, and that I have examined this notice, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I am the official authorized to sign this report, and I am signing by entering my name below.

Glenn W Smith

08/31/2004

**Sign
Here**

Name of authorized official

Date

28044184604

TEXANS for TRUTH

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NEW CAMPAIGN KICKS OFF WITH TV AD SPOTLIGHTING BUSH ABSENCE FROM ALABAMA NATIONAL GUARD

Alabama Air National Guard Veteran Says President Wasn't There: Texans for Truth Seeks to Reopen Scrutiny of President's Service Record

(AUSTIN, TEXAS)— Texans for Truth launched a campaign this week seeking to uncover the answers to persistent questions surrounding President George W. Bush's absence from his National Guard service while in Alabama. According to a new television commercial unveiled by the campaign on Wednesday, September 8, Bush was not to be found at the Alabama air base where he claims to have served in 1972.

"It would have been impossible to be unseen in a unit of that size," said Bob Mintz, a Lieutenant Colonel in the Alabama Air National Guard, who served at the Montgomery, Alabama air base and in the same unit as Bush allegedly served in 1972. Mintz is featured in a TV ad that helped kick off the campaign. The ad, paid for by online donations, will begin airing Monday in swing state communities who've sustained the most losses in Iraq.

"Yesterday, America lost its thousandth soldier in Iraq," said Glenn Smith, Executive Director of Texans for Truth. "We have a commander in chief who dodged his own military duty during Vietnam. We think the husbands, wives, mothers and fathers of these soldiers deserve to know the truth about George W. Bush.

According to Mintz, who was only one of a handful of young, unmarried men in his unit, he searched actively for Bush because he was eager to make friends. Bush would have been one of a few junior lieutenants at the base, which had a total of 50 to 60 pilots. Yet for the entire year that Bush claims he was on the base, Mintz never saw nor heard of Bush, nor did any other veterans interviewed by the press. This was highly unusual given that all the pilots on the base knew each other, most pilots trained together for at least two weeks out of the year and it was a small base.

"Was George W. Bush AWOL in Alabama? America deserves to know," said Smith. "None of his superiors remember him. Bush himself has said he has no specific recollections of serving. His military records have suspiciously disappeared and dozens of veterans from his unit say they've never seen him nor hair of him. The evidence suggests he may have dodged his military responsibilities during Vietnam. We're urging him to stop dodging the

Exhibit B

truth."

The TV ad and campaign come just days ahead of a "60 Minutes" exposé featuring Former Texas House Speaker Ben Barnes admitting he helped President Bush evade service in Vietnam by getting into the Texas Air National Guard

Mintz joins 16 retired officers, pilots and senior enlisted men who served in Bush's unit in 1972 who say they simply do not recall seeing Bush at the air base, according to a The New York Times story published earlier this year. The ad campaign and Mintz's public appearances promise to spur renewed scrutiny of Bush's Vietnam era service record.

Texans for Truth announced an initial ad buy of \$110,000—raised primarily by online donations from Drive Democracy and Texas MoveOn.org members. The ad buy will take place in the following markets.

- Harrisburg, PA 52 soldiers from Pennsylvania have lost their lives in Iraq
- Columbus, OH. 33 soldiers from Ohio have lost their lives in Iraq.
- Detroit, MI. 30 soldiers from Michigan have lost their lives in Iraq.
- Portland, OR 22 soldiers from Oregon have lost their lives in Iraq
- Phoenix, AZ. 21 soldiers from Arizona have lost their lives in Iraq.

Starting Monday, the ad will appear on the following cable stations in these markets:

- CNN
- FOX News
- MSNBC
- A&E
- Discovery
- Lifetime
- TLC
- USA
- History
- TBS

Texans for Truth is the 527 arm of Drive Democracy, a 20,000-member Texas-based grassroots organization that seeks to increase political participation by helping ordinary people make their voices heard in politics.

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Los Angeles Times

September 15, 2004 Wednesday
Home Edition

SECTION: MAIN NEWS; National Desk; Part A; Pg. 20

LENGTH: 524 words

HEADLINE: The Race to the White House;
Writer Is Top 'Texans' Donor;
'Seinfeld' scribe gives to group offering a reward for proof of Bush Guard service.

BYLINE: Lisa Getter, Times Staff Writer

DATELINE: WASHINGTON

BODY:

A Hollywood television writer is the largest donor to **Texans for Truth**, the independent liberal group that offered \$50,000 Tuesday to anyone who can prove that President Bush fulfilled his National Guard service in 1972.

Daniel O'Keefe, a consulting producer for the Jason Alexander CBS sitcom, "Listen Up," contributed \$100,000 to the group, far surpassing all other donors to the 527 organization. He has also written for "Seinfeld" and "The Drew Carey Show."

The group, which formed in response to a conservative 527 that had been attacking Democratic presidential nominee Sen. John F. Kerry's Vietnam War service record and antiwar activity, had collected about \$400,000 from approximately 6,000 donors, its founder, Glenn Smith, said Tuesday.

The so-called 527 groups, named for the tax code that helped create them, have emerged as an important force in this year's presidential race, spending tens of millions of dollars on television advertising in the battleground states where the election is expected to be closest.

Even though a campaign-finance reform law curtailed the amount individuals can donate to political parties, the 527s are allowed to collect and spend unlimited contributions as long as they don't coordinate their plans with the campaigns.

Most of the money contributed to **Texans for Truth** has come in small amounts.

In addition to the large donation from O'Keefe, the group has received two \$5,000 donations, including one from Michael Kieschnick, the president of Working Assets, a San Francisco-based telecommunications firm that donates part of each customer's payment to progressive causes.

Exhibit C

The other \$5,000 donor is Carol Golden of Princeton, N.J.

Texans for Truth also received one \$2,000 contribution and 16 donations of \$1,000, records filed Tuesday with the Federal Election Commission show.

In comparison, Swift Boat Veterans for Truth -- the group attacking Kerry -- has collected \$6.7 million from more than 53,000 donors. Its largest contribution so far is \$500,000.

Nevertheless, the liberal group said Tuesday it had enough money to offer a \$50,000 reward to anyone with "original information" who proves Bush fulfilled "all required duties and drills" between May 1972 and May 1973 at Dannelly Air National Guard Base in Alabama.

The group said it was seeking "firsthand, eyewitness testimony" or "copies of genuine and authentic documents" that would stand up in court.

"George W Bush continues to mislead the American people, dodging the truth about his military record," Smith said. "If the president won't come clean that he dodged his military responsibilities in Alabama during the height of the Vietnam War, we'll continue our search for the whole story."

The group began running television ads Monday in five states -- Arizona, Michigan, Ohio, Oregon and Pennsylvania -- featuring a former Air National Guard lieutenant who said he never saw Bush while the president says he served on a Montgomery air base.

Smith said he was surprised by the donation from O'Keefe, whom he had never met. He said it was made in response to a mass e-mail campaign sent out, in part, by the MoveOn.org Voter Fund, another 527.

LOAD-DATE: September 15, 2004



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Chicago Tribune

September 10, 2004 Friday
Chicago Final Edition

SECTION: NEWS ; ZONE C, Pg. 1

LENGTH: 1340 words

HEADLINE: Agile '527' groups lead well-funded hit-run war

BYLINE: By Howard Witt and John McCormick, Tribune staff reporters. Howard Witt reported from Texas and John McCormick reported from Chicago.

DATELINE: AUSTIN, Texas

BODY:

In the time it took most Americans to plan their Labor Day picnics, **Texans for Truth** grew from a notion inside one Democratic activist's head to a full-fledged political advocacy organization with \$350,000 in the bank and an attack ad targeting President Bush scheduled on television.

Such is the ease with which nimble political operatives from both parties, orbiting outside the official campaigns of Sen John Kerry and Bush, can spawn so-called 527 organizations to launch scathing offensives at their opponents and then, if they choose, disappear into the weeds.

Aided by the speed and reach of the Internet, abetted by a rush of instant media attention and enabled by campaign finance laws that grant them the ability to raise unlimited sums, these political organizations--named for the section of tax code that defines them--became indelible fixtures of the 2000 presidential election. In the 2004 campaign, they are proving even more agile and aggressive.

Texans for Truth, the creation of Texas Democratic political consultant Glenn Smith, was officially registered with the IRS on Aug. 31. By Tuesday of this week, it was unveiling a TV ad questioning Bush's service record with the Alabama Air National Guard during the Vietnam War. By Thursday, the group had collected \$350,000 in donations, Smith said.

Along the way, **Texans for Truth** benefited from a mass e-mail solicitation sent to tens of thousands of members of two affiliated anti-Bush groups, MoveOn.org and DriveDemocracy.org, as well as extensive publicity afforded by coverage of its commercial. The actual ad won't air publicly until next week in the key states of Pennsylvania, Ohio, Michigan, Arizona and Oregon.

Smith, an Austin resident who ran Democrat Tony Sanchez's unsuccessful 2002 campaign for Texas governor, said he created **Texans for Truth** in reply to Swift Boat Veterans for Truth, the group of Vietnam veterans backed by prominent Texas Republican donors who launched a TV commercial in early August alleging that Kerry lied about his decorated Vietnam service.

Exhibit D

Swift Boat Veterans for Truth fired back Thursday, announcing plans for a new anti-Kerry ad to begin airing on Friday.

New anti-Kerry group

Meanwhile, another anti-Kerry group, called MoveOnForAmerica.org, has surfaced with a TV commercial alleging that Kerry, as a private attorney in 1982, secured a parole for a client who pleaded guilty to the attempted murder of a police officer. The group, which was registered with the IRS on Sept. 3, was created by Stephen Marks, a Republican political consultant based in Virginia who served as a press secretary to President Bush's brother, Jeb Bush, in 1994. Jeb Bush is now the governor of Florida.

"It's basically my group," Smith said when asked about **Texans for Truth** in a telephone interview from Washington, D C , where he was traveling this week. "Everywhere I went, people were asking me about the Swift Boat Veterans' attack on Kerry. Given the mysteries and unanswered questions about Bush's own military record, these questions need to be raised in a more visible way."

The **Texans for Truth** ad features a man named Bob Mintz, who says he served as a lieutenant colonel concurrently in the same Alabama Air National Guard unit to which Bush was assigned in 1972. Mintz said he never saw Bush on the base.

"It would have been impossible to be unseen in a unit of that size," Mintz says in the ad.

White House press secretary Scott McClellan suggested Thursday that **Texans for Truth** was acting as a surrogate for the Kerry campaign.

"I think you absolutely are seeing a coordinated attack by John Kerry and his surrogates on the president," McClellan told reporters.

But Smith and officials of the Kerry campaign denied any connections or contacts over the **Texans for Truth** ad. That would be a violation of the rules governing 527 organizations, which are barred from directly endorsing candidates and are required to remain separate from them.

"Since I first had the idea, I've not talked to anyone on the campaign," Smith said. "I intentionally did not tell them, because I don't think I'm supposed to have contact with them."

Smith said he attended the Democratic National Convention in July and talked with Kerry campaign workers there, but not about any plans for creating a 527 organization. The convention took place before the first broadcasts of the Swift Boat Veterans ads, which Smith said served as the impetus for the creation of **Texans for Truth**.

Kerry spokesman Phil Singer also said there is no relation between the campaign and **Texans for Truth**.

\$350,000 in donations

"As far as I can tell, there is no connection between our organization and their organization," Singer said.

While many 527 organizations try to obscure their origins or supporters, Smith said he was determined that **Texans for Truth** would be fully transparent. Its Web site explains that it is a direct offshoot of DriveDemocracy.org, a Texas group created last year to oppose the Republican-led redrawing of Texas

congressional districts that could unseat five Democrats in the November election.

DriveDemocracy.org, in turn, was created and funded by MoveOn.org, which has spent an estimated \$18.5 million on ads attacking Bush in the nation's 100 largest television markets since March, according to ad tracker TNS Media Intelligence/CMAG.

"I have made it a point to be as transparent as I possibly can," Smith said. "I am who I am--a pretty well-known Democrat in Texas. ... I also happen to think that's the responsible thing to do. I'm very happy for people to know who's speaking up."

Smith said most of the \$350,000 his group raised this week came from individual on-line donations averaging \$50 each. But \$100,000--the largest donation--came from Los Angeles screenwriter Daniel O'Keefe, Smith said.

O'Keefe, a major Democratic donor, gave \$1,000 to Kerry's then-struggling campaign in December 2003, according to PoliticalMoneyLine.com. He contributed an additional \$3,250 to Kerry in January, more than legally allowed; Kerry's campaign refunded \$2,250 in March.

In May, O'Keefe also contributed \$2,000 to Kerry's legal and accounting fund, separate from his main campaign fund.

News coverage of Swift Boat Veterans for Truth had a similarly positive effect on that group's fundraising efforts. The group says it has raised roughly \$4 million from more than 50,000 contributors, with the vast majority coming from donations made on its Internet site.

"The free media we got ... was very helpful," said John O'Neill, a Texas lawyer who leads the group.

- - -

Trail Guide

A daily look at the presidential campaign

53 DAYS TILL ELECTION DAY: President Bush, in

Pennsylvania, said a "hidden Kerry tax plan" would hurt

the economy. Sen. John Kerry, in Iowa, said the president

had failed to address the health-care crisis.

HARSH, HARSH, HARSH

The road to the White House is getting mighty rough. A Democratic campaign worker in Minneapolis displayed a bumper sticker at party headquarters: "Bush/Cheney-- Most Hated World Leaders Since Hitler." Republicans complained about the "repulsive smear," and Democrats quickly took it down.

PRODUCT PLACEMENT

Cheney says the nation's economic statistics are failing to measure an important marketplace: eBay.

"That's a source that didn't even exist 10 years ago," he said in Ohio. "Four hundred thousand people make some money trading on eBay."

Other recent verbal skirmishes:

- Democrats thought Vice President Dick Cheney crossed the line this week by suggesting that a Kerry victory would make a terrorist attack more likely. On Thursday, former Vice President Al Gore called it "a sleazy and despicable effort to blackmail voters with fear."

- Teresa Heinz Kerry, discussing her husband's health-care plan, said: "Only an idiot wouldn't like this. Of course, there are idiots."

BY THE NUMBERS

1.6 million

Jobs that Kerry says have been lost under Bush. But Kerry's figure represents only the number of private sector jobs lost. When an increase in federal, state and local government jobs is factored in, the loss in non-farm payrolls is 913,000.

NOTES: CAMPAIGN 2004

GRAPHIC: PHOTO: Bob Mintz is featured in a 572 group's ad questioning President Bush's military service Family photo.

PHOTO: Democratic consultant Glenn Smith registered the **Texans for Truth** group on Aug. 31.

Cynthia Hughes Literary Services

PHOTOS 2 GRAPHIC

LOAD-DATE: September 10, 2004

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September 9, 2004, Thursday, BC cycle

SECTION: Political News

LENGTH: 660 words

HEADLINE: Texans fighting some of biggest battles of campaign

BYLINE: By JIM VERTUNO, Associated Press Writer

DATELINE: AUSTIN

BODY:

Texans just can't stay away from a good fight.

While the Lone Star State is not a key battleground state, some of the attacks in the war for the Oval Office have been launched with Texas money and manpower.

The architect and chief financial backer of the controversial Swift Boat Veterans for Truth and its television ad challenging John Kerry's military record are both from Texas.

Not to be outdone, a group called **Texans for Truth** has come out swinging this week with its own ad critical of President Bush's service in the National Guard during Vietnam.

Both groups are among the dozens of independent soft-money organizations, dubbed "527s" for the part of the tax code they file under, that push partisan agendas to influence voters.

"Texans have money, they're aggressive and politically in play in just about any election anywhere," said Bill Miller, a Republican consultant who also was hired as a spokesman for Houston developer Bob Perry, the chief financial backer of the Swift Boat Veterans.

Political experts say that's because Texans learn how to fight hard in a state where politics is often described as a "full contact sport."

"They play dirty down in Texas," White House spokesman Dan Bartlett told CBS's "60 Minutes II" in response to questions about Bush's military service. "I've been there. I've seen how it works."

And while Bush was hugely popular as Texas governor, any politician will have enemies who want to defeat him.

Exhibit E

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"The more popular the politician, the more aggressive the opposition gets," Miller said. "That's the nature of the beast."

The architect of the veterans group attacking Kerry is John O'Neill, a Houston attorney who co-wrote "Unfit for Command" a book which attacks Kerry's military record

The group got started with the help a donation of at least \$100,000 from Perry, a close friend of O'Neill's. The group was advised by Dallas Republican Merrie Spaeth, a media relations director in the Reagan White House who helped engineer an ad attacking Sen. John McCain's environmental record during his presidential primary run against Bush in 2000.

Tired of taking punches, Texas Democrats finally started fighting back to support Kerry.

"A lot of Texans are embarrassed that the rest of the world thinks we're all like George Bush and we're not," said Glenn Smith, a longtime Democratic operative in Texas who said the **Texans for Truth** ad was his pet project.

"We want to have our voices heard," said Smith, who worked for former Texas Gov. Ann Richards, a Democrat defeated by Bush in 1994, and the manager of the failed gubernatorial campaign for Democrat Tony Sanchez. Smith also wrote "Politics of Deceit," a book critical of the Bush administration.

This week, it was Ben Barnes, a former Democratic Texas House Speaker and lieutenant governor talking to "60 Minutes II" about his claims that he helped Bush get in the National Guard during the height of the Vietnam War.

Smith's **Texans for Truth** announced plans to spend about \$100,000 to run an ad in which a lieutenant colonel in the Alabama Air National Guard questions Bush's absence from his service in that state in 1972.

Smith said the ad will run in Oregon, Ohio, Arizona and Michigan - battleground states that have been hit hard by military casualties in Iraq. Smith said he's raised \$360,000 for **Texans for Truth** and may purchase more ad time.

Texans for Truth is an arm of DriveDemocracy, an Austin-based organization that got its initial funding from the liberal group MoveOn.org. Affiliates of MoveOn.org - MoveOn PAC and MoveOn Voter Fund - have spent about \$7 million since March 1 on anti-Bush TV ads, according to the Center for Responsive Politics, a non-partisan research group that tracks money in politics.

On the Net:

Center for Responsive Politics: www.opensecrets.org

Swift Boat Veterans of Truth: www.swiftvets.com

Texans for Truth: www.texansfortruth.com

LOAD-DATE: September 10, 2004

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TEXANS for TRUTH

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DONOR INFORMATION PAGE

Your donation will help us put the Texans for Truth TV ad on the air in key swing states across the nation.

Federal election and tax laws require that we collect the following information. Please fill out the entire form -- otherwise, we can't process your donation -- then click through to our SECURE donation center to enter your credit card information. If you would prefer to **mail your donation**, [click here](#).

* indicates a required field:

Title

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My contribution is from my own funds, by credit card, for which I have a legal obligation to pay. The funds are not from an incorporated

Exhibit F

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